IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.1152 OF 2005
IN
NOTICE OF MOTION NO.3280 OF 2004
IN
SUIT NO.3193 OF 2004

Messrs Chothani & Sadguru Associates .. Appellant

v/s.

Deepak Hargovindas Doshi & ors. .. Respondents

Mr.Y.S.Jahagirdar, Senior Counsel with Mr.D.H.Mehta i/by M/s.S.R.S.Legal for the appellant.

Mr.J.P.Sen i/by M/s.Udwadia & Udeshi for the respondent No.1.

Mr.P.K.Samdani with Ms.Radhika Pinzara and Mr.Subodh Joshi i/by M/s.P.K.Shroff & Co. for the respondent Nos.2 and 3.

Mr.A.Y.Bookwala with Mr.V.K.Shiralkar and Mr.Hemang Parekh i/by M/s.Shiralkar & Co. for the respondent Nos.4 to 6.

CORAM : R.M.LODHA AND
ANOOP V. MOHTA, JJ.

DATED : 9th January, 2006

P.C.

Heard Mr.Y.S.Jahagirdar, the learned Senior Counsel for the appellant. We perused the impugned order.

2. Prima facie consideration of the matter by the learned motion Judge cannot be said to suffer from any legal infirmity. Admittedly, the defendant Nos.2 and 3 are not party to the memorandum of understanding. Even if it be assumed that the defendant Nos.2 and 3 did not object in plaintiff's applying for various permissions, it cannot be said, at least at this stage, that they

became party to the memorandum of understanding impliedly. Besides that the memorandum of understanding is nothing but an agreement to develop the property. Obviously such agreement cannot be specifically enforced. For breach of such agreement, the plaintiff at best shall be entitled to damages. For all these reasons, we are satisfied that the impugned order does not call for any interference.

3. Appeal is dismissed in limine.

4. Needless to say, the observations made by the learned motion Judge or by us in this order are only on prima facie consideration of the matter and shall not affect the consideration of the matter on merits in the suit.

(R.M. LODHA, J.)

(ANOOP V. MOHTA, J.)